IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Crl.MC.No. 2267 of 2007()

CRIME NO.469/06 OF KASARAGOD POLICE STATION
CC.993/2006 of JUDL. MAGISTRATE OF FIRST CLASS, KASARAGOD

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PETITIONER: ACCUSED NO.15

B.M.IBRAHIM KHAELI, AGED 22,
S/O.MOIDEEN KUNHI, NEKKARA HOUSE,
MOGRAL PUTHUR, KASRAGOD.

BY ADV. SRI.P.M.HABEEB

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2267 of 2007

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Dated this the 16th day of July, 2007

O R D E R

The petitioner has come to this Court with this petition under section 482 Cr.P.C. with a prayer to invoke the inherent jurisdiction to quash the prosecution initiated against him under Section 283 r/w. 149 I.P.C. The learned counsel for the petitioner submits that the cognizance taken of the offence punishable under Section 188 I.P.C. is not proper or justified in as much as it does not comply with the mandate of Section 195 Cr.P.C. Be that as it may, the prosecution cannot obviously be quashed as the allegation is not only under Section 188 I.P.C. There is an allegation raised under Section 283 Cr.P.C. also for which no compliance with Section 195 Cr.P.C. is necessary. Posed with this difficulty, the learned counsel for the petitioner submits that the allegation under Section 283 I.P.C. has been incorporated without any justifiable reason. The counsel submits that in the F.I.R. registered there is no allegation under Section 283 I.P.C. and the consequent inclusion of Section 283 is not justified.

2. I find no merit in this contention. The very allegation is that procession was taken out in violation of the orders of the court. Consequent allegation under Section 283 I.P.C. is only that traffic was obstructed by such procession taken out. In any view of the matter, I am not persuaded to agree that this is a fit case where powers under Section 482 Cr.P.C. can or deserves to be invoked. This certainly is a case where the petitioner must appear before the learned Magistrate and raise all contentions including the contention regarding non-maintainability of the prosecution for want of the requisite sanction under Section 195 Cr.P.C.

3. This Crl.M.C. is hence dismissed. But I may hasten to observe that the dismissal of this petition will not in any way fetter the rights of the petitioner to raise all relevant contentions before the learned Magistrate.

(R. BASANT)
Judge

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